

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 11 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WALTH TAX

Versus

RAJIV (MINOR) I MODI

Appearance:

MR MIHIR JOSHI, instructed by
MR MANISH R BHATT for Petitioner
MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 21/08/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

This reference relates to the following questions in respect of which the Appellate Tribunal was required to draw up the statement and refer the case to this Court under the provisions of Section 27(3) of the Wealth Tax

Act, 1957.

1. "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the assessee had no interest in the partnership firm of M/s. Cadila Laboratories except to receive Rs. 2,500/- per month under the agreement dated 1.1.1968?"
2. "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal erred in law in holding that even if the assessee had any other interest since under both partnership deed dt. 3.4.1963 and 1.1.1968, the partnership was at will the asset was precarious?"
3. "Whether, the Appellate Tribunal was on the facts and in the circumstances of the case, right in law in holding that neither Section 2(e)(1) nor Section 2(e)(2) of the Wealth-tax Act had any application to the facts of the case?"
4. "Whether, the Appellate Tribunal erred in law in directing the Wealth-tax Officer not to include in the wealth of the assessee any amount towards the share of the assessee in the partnership firm of M/s. Cadila Laboratories on account of the will of the deceased partner Shri Govindlal M. Tamboli except to the extent of a right to receive a monthly sum of Rs. 2,500/-?"

The assessee is a legal heir under the will of one Govindlal M. Tamboli, who was one of the Partners in Messrs Cadila Laboratories and who passed away on 10th October, 1967, bequeathing the right, title and interest that he had in the said firm and the amount outstanding to his credit with the said firm, as also his share in the property of the firm to the assessee, who was the son of his niece Shilaben, under a will dated 28th February, 1967. After the death of the said Partner Govindlal M. Tamboli, there was a fresh lease deed executed on 1st January, 1968, in which it was recited that the father of Rajiv who was his natural guardian had agreed that minor Rajiv shall not exercise his rights and instead will allow the goodwill and other assets representing the share of 15 per cent of Govindlal Tamboli to remain in the firm, on the firm agreeing to paying certain periodical sum which embodied in a separate deed executed between the firm on one hand and Mr. Indravadan Modi as a natural guardian of minor Rajiv, on the same day.

In his return of wealth for the Assessment Year 1969-70, the assessee valued the goodwill at Rs. 36,000/- and Rs. 1,884/-, contending that the amount should not be added in the total wealth of the assessee. The WTO did not accept this contention on the ground that the assessee had inherited the value of goodwill as on 10th October, 1967 when Govindlal Tamboli passed away. In the returns filed by the assessee for the years 1970-71 to 1973-74 also the assessee contended that the value of Rs. 37,884/- which was shown, should not be included in his wealth, but the same was not accepted. The AAC held that after the death of Govindlal Tamboli, his 15% share in the firm devolved on the assessee. It was also observed by him that on the date of death of Govindlal Tamboli, his capital account in the books of the firm showed a credit balance of Rs. 55,982.90 and this balance was transferred to an account opened in the name of the assessee and the amount was treated as a loan from the assessee and interest was paid thereon from year to year. In the view of the AAC, two sums of Rs. 36,000/- and Rs. 1,884/- brought to tax by the WTO did not represent the real value of 15% interest in the share of deceased Govindlal, which had devolved on the assessee. A notice was therefore, issued on the assessee to show cause as to why the interest of the firm should not be valued at Rs. 4,80,000/-, which figure was arrived at by multiplying the yearly consideration of Rs. 30,000/- on the basis of Rs. 2,500/- per month, which was agreed, multiplied by sixteen. The AAC took into consideration the figures of income returned by the firm for the Assessment Years 1967-68 to 1977-78 and took the view that the potentialities of the firm must have been visualised by the parties while entering into the agreement to give to the assessee Rs. 2,500/- per month. The AAC determined the capital value of this interest taking the annual yield at 6 1/4%. In the view of the AAC, the rate of yield called for applying the multiple of sixteen to the annual yield for arriving at the capital value of the interest. The capital value was thus, taken at 4,80,000/- against Rs. 37,884/- brought to tax by the WTO in each of the Assessment Years and wealth was enhanced by Rs. 3,62,116/- in each of the assessment years 1969-70 to 1974-75.

The assessee carried the matter to the Tribunal and the Tribunal held that the assessee did not have any interest in the partnership firm except to receive Rs. 2,500 per month. It was observed that the agreement to receive the said amount was not arrived at on the ground that it was colluding and that the subsequent events

showed that the agreement to receive Rs. 2500/- per month was in the interest of the assessee, who was a minor. It was held that the assessee was not the heir of Govindlal Tamboli and was not entitled under the Partnership deed dated 3.4.1963 to be admitted to the Partnership. It was also held that there was nothing in the Partnership deed dated 3.4.1963 which required to admit a minor heir of a deceased Partner to the benefits of Partnership. The Tribunal therefore, held that the assessee had no interest in the Partnership firm except to receive Rs. 2,500/- per month under the agreement dated 1st January, 1968. The Tribunal therefore, directed not to include in the wealth of the assessee the amount of Rs. 37,884/ and to recompute the wealth of the assessee after excluding the said amount. The order of enhancement made by the AAC for the Assessment Years 1969-70 to 1974-75 was set aside, leading to this reference.

There is no dispute about the fact that the assessee inherited under the will dated 28th Feb. 1967 of Govindlal Tamboli on 10.10.1967 i.e. the date on which the testator passed away, the right, title and interest of the testator in the Partnership firm Messrs Cadila Laboratories and an amount of Rs. 55,982.90, as also his share in the property of the firm. It is obvious that the will operated on 10th October, 1967 evolving the right, title and interest and the share of the testator Govindlal Tamboli on the assessee. Therefore, on that day, the right of the assessee who was a minor to claim the right, title, interest including the share of the testator in the firm which had devolved on him got crystallised. As defined by the provisions of Sec. 2 (e) of the said Act, 'asset' includes properties, movable or immovable, except those which are specified therein. The property which had devolved on the assessee on 10.10.1967 was an asset belonging to the assessee, which required to be included in his net wealth. Any agreement which may have been entered into after the property had devolved in the above manner under the will in respect of such property was only an arrangement as to how the asset which the assessee acquired should be dealt with. The crucial date for ascertaining the value of the asset acquired under the will by the assessee was the date on which the bequest of legacy opened which was on 10.10.1967. The assessing officer was required to work out the value of the asset so acquired in context of that date and the subsequent arrangement of 1st January, 1968, which was made at by the natural guardian of the minor assessee in an agreement entered into with the firm cannot therefore, constitute the basis for holding that

the amount of Rs. 2,500/- per month fixed for the use of the asset mentioned in the agreement was to be treated as the asset acquired under the will. The Tribunal over-looked the fact that since the right, title and interest including the share in the property of the firm which Govindlal Tamboli had bequeathed to the assessee, the assessee became entitled to recover it from the firm when the bequest opened on 10.10.1967. In this view of the matter, in our opinion the Tribunal, on a mis-conception of law, committed an error in holding that the assessee had no interest in the partnership firm except to receive Rs. 2,500/- per month under the agreement dated 1.6.1968.

We therefore hold that the assessee already acquired the asset consisting of the right, title and interest and share of deceased Govindlal Tamboli when it devolved on him on 10.10.1967 which he was entitled to recover from the firm and that the amount of Rs. 2,500/per month referred to in the agreement dated 1.1.1968 which was executed after the asset had devolved on the assessee, could not be taken to be the value of that asset, as erroneously decided by the Tribunal. The questions Nos. 1 and 4 are therefore, answered accordingly in favour of the Revenue and against the assessee.

As regards question No.2, it is obvious that since admittedly the assessee who was a minor could not have become a Partner in the firm. He was never admitted to the benefits of the Partnership firm. He therefore, did not have any interest in the firm in capacity of a partner or a minor admitted to the benefits of a Partnership. He was only entitled to the share of Govindlal Tamboli in the firm, which had devolved on him under the will and had become his property when the bequest opened on 10.10.1967, which alone he was entitled to recover from the firm. Since the position of his rights already crystalised on 10.10.1967, it was immaterial whether the partnership was at will. In view of our answer to questions Nos. 1 and 4, this question No.2 would therefore not survive and is left unanswered.

As regards question No.3, again since the assessee was not a partner in the firm nor was he admitted to the benefits of the Partnership, the question of his interest in the firm being precarious does not arise since the assessee had already acquired the share of the deceased partner Govindlal Tamboli under the will on 10.10.1967 and his rights became crystalised on that day for recovering whatever was the right, title and

interest including the share of the deceased partner, in the firm. The question No.3 therefore, would not survive and is left unanswered, in view of our answer to questions Nos. 1 and 4. The Reference stands disposed of accordingly with no order as to costs.

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